

DECISION



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Mrs. Eaton
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-194110 DATE: January 9, 1980
MATTER OF: Telephonics Corporation-^{DLG}0386

DIGEST:

1. When statements by protester and contracting agency conflict as to availability of records allegedly required for preparation of proposals, in absence of additional evidence from protester, who has burden of proof, GAO cannot conclude that the records were available.
2. When contracting agency determines that records requested by potential offeror for preparation of proposal are either unavailable or incomplete, agency need not extend closing date for receipt of proposals for purpose of distributing records to all offerors.
3. Where information on existing telephone system is unavailable or incomplete, but extent of work required for new system may be estimated by offerors making site visits, agency need not spend great sums of money to eliminate need for site visits, and specifications are sufficiently definite.
4. Contracting agency is not required to compensate for advantage of incumbent contractor unless it results from preference or unfair action on part of Government.

Telephonics Corporation (Telephonics) protests the award of a contract for furnishing, installing, and maintaining an automatic telephone system at the United States Coast Guard Academy, New London, Connecticut. - DLG 00695

The protester argues that the solicitation failed to provide sufficient information to allow it to prepare a proposal intelligently and favored the local, operating telephone company, which had installed and maintained the existing phone system and thus had exclusive access to records showing details of that system. For the following reason, we find Telephonics' protest without legal merit.

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[ALLEGATION THAT SOLICITATION FAILED TO
Provide Sufficient Information]

The solicitation, No. 60-79-2034, was issued on December 14, 1978, for a one-year contract with options of up to 10 years. Closing date for receipt of initial proposals was January 30, 1979. Potential offerors were advised by telex that the request for proposals (RFP) was being mailed to them and that a tour of the Academy would be conducted on December 20.

The Coast Guard states that the tour was intended to acquaint offerors with the overall layout and physical dimensions of the Academy; anyone interested in proposing was expected to return for a more detailed site inspection. The RFP specifically stated that no technical or contractual questions would be answered during the tour, but that the solicitation would be amended if necessary to answer written questions received before a January 2 deadline.

The tour was attended by a representative of Northern Telecom; no one from Telephonics attended.¹ That representative has submitted an affidavit to our Office, stating that he believes he saw "plant in place" records during the tour, requested them, and was told that they would be reproduced and mailed to all offerors. Such records, the affidavit indicates, would have shown the size and location of conduits, troughs, raceways, and telephone cables.

By letter of January 19, Northern Telecom complained to the contracting officer that it had not yet received the requested records. The contracting officer advised the firm that there had been a "misunderstanding" about what was available and that the documents observed during the tour were unscaled site plans, which already had been mailed to offerors.

¹ According to counsel for Telephonics, at the time in question, Telephonics was an independently-owned, factory authorized contractor who bid on and installed Northern Telecom equipment; Telephonics has since been "acquired" by Northern Telecom and, for purposes of this protest, the two firms "worked together and are effectively one entity."

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On January 25, Northern Telecom informed the contracting officer that it was in the process of preparing a proposal but required plant, cable and equipment records:

"* * * We believe it is absolutely necessary that these records and documents be made available to all vendors * * *. [W]e * * * request a delay of two weeks be approved to the proposal response date after subject records and data are made available * * *."

On January 26, a representative of Telephonics was given a walking tour of the Academy by a non-technical guide; this representative again asked the contracting officer to provide Northern Telecom with more detailed information regarding the existing telephone system. However, on January 29, the contracting officer advised Northern Telecom:

"Northern Telecom has received the same consideration given all offerors, including conducted tours of the Academy and the opportunity to submit written questions. Northern Telecom has failed to have cognizant people in attendance on the tour and failed to submit questions not later than 2 January 1979 in accordance with the requirements of the RFP. Proposals now are being received from competing firms indicating that the information furnished in the RFP is sufficient for proposal preparation purposes. Your request for extension of the proposal submission date therefore is denied."

Telephonics did not submit a proposal but promptly protested to our Office.

The protester cites numerous decisions of our Office for the proposition that the procuring activity must give the offerors sufficient detail in the RFP specifications to enable them to compete intelligently and on a "relatively equal basis." As an example, the protester points to

Communications Corps, Inc., B-179994, April 3, 1974, 74-1 CPD 168, where specifications for color slides required the slides to be of "first class material and workmanship" but did not spell out what that meant. We found these specifications defective because they did not advise offerors of the Government's actual needs.

In the protester's view, the instant specifications are defective for the same reason. Telephonics argues the agency should have provided the offerors with (1) the locations of telephones to be installed; (2) drawings showing existing cable ducts within buildings; and (3) a survey of existing cables between buildings and/or a description of where new cables were to be installed, together with appropriate excavation specifications.

The Coast Guard, on the other hand, argues that sufficient information was contained in the RFP or "was available to any offeror who was willing to invest a reasonable amount of effort in examining the work site." It adds that no information which was useful to offerors was held back and that no offeror was given a preference by the Coast Guard.

With regard to the location of telephones to be installed, the Coast Guard states that since the total number and type of instruments was specified and the number of buildings was known to offerors, the only remaining questions involved the number of phones per building, which could have been determined by an examination of the terminal boxes in each, and their distribution by floor, which would have had only a minor effect on cost. As to the existing cable ducts in the individual buildings, the Coast Guard states that it had drawings which showed this information in an "as built" condition, but that many building modifications had taken place, with no assurance that the drawings had been revised. As a result, the Coast Guard had little or no confidence in these drawings and concluded that distribution of them to offerors was not warranted.

The Coast Guard further states that offerors should have been able to determine by site examination "just which

cable troughs and raceways would be available for their use and which would not be." With regard to all three of the protester's points, the Coast Guard argues that the work involved in the interconnecting cabling "represents only a minor portion of the cost of the phone system" and the information requested would have "only a minor effect on the cabling."

We agree with the protester that a solicitation should contain sufficient information to allow offerors to compete intelligently and on equal terms. However, we do not find that the Coast Guard's solicitation failed to provide offerors with sufficient information or that important information was withheld from offerors.

Which drawings were available from the Coast Guard is a question of fact. The Coast Guard acknowledges that Southern New England Telephone Company has plant, cable, and equipment records "by virtue of its physical presence at the Academy for over 40 years," but argues that such records are the property of this carrier and are not available to the Government for dissemination to potential offerors.

While Northern Telecom's representative believes that he saw such records, his affidavit describes them as a "one-inch pile of oversize drawings." There is no indication that he examined the documents or had actual knowledge of their contents. The Coast Guard states that these documents were merely site plans, which Northern Telecom has been given. Further, the agency maintains that while it does have "as built" drawings of the various buildings, these were not provided because the buildings have been extensively modified and the drawings are no longer accurate.

We do not believe that Northern Telecom has met its burden of proof as to the agency's possession of records which show the size and location of conduits, troughs, raceways and telephone cables, and in the absence of additional evidence, we cannot conclude that the records were available to the agency. Achievement Products, Inc., B-192621, January 22, 1979, 79-1 CPD 36.

There is also a question as to whether such records were necessary for proposal preparation. Telephonics points out that paragraph 2.8 of the specifications stated that an inventory of existing cables and terminals provided by the local tariffed telephone company would be available to offerors upon request. The Coast Guard, however, points out that this paragraph, which initially allowed offerors the option of either using existing cables and terminals or installing new ones, was amended on January 12 to require offerors to base their proposals on the use of new equipment, so that the information on existing equipment was not necessary.

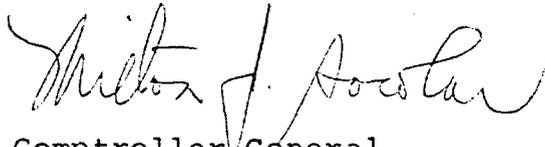
In addition, the Coast Guard points out, existing records depict requirements "far in excess of those for an electronic [automated] telephone system," since, for example, a single line telephone, coupled with an electronic switchboard, has more capacity than a six-button set and requires approximately one-sixth of the cable.

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We note that two offerors in addition to Southern New England Telephone Company made detailed site inspections and that four timely proposals were received; award has since been made. We therefore do not find the contracting officer's refusal to extend closing date was unreasonable. If the Coast Guard did not have the requested records and/or did not believe it was necessary to obtain or compile them, there would be no point in extending the closing date for this purpose. We have stated that it is not always possible for an agency to draft exact specifications, and that it need not spend great sums of money in order to eliminate the need for site visits by potential offerors. See Palmer and Sicard, Inc., B-192994, June 22, 1979, 79-1 CPD 449. Since existing data on the more than 40-year old telephone system was obsolete or of little value, but information was available through site visits, we believe the case is distinguishable from the one in which "first class" color slides were required, and that the specifications here were sufficiently definite.

Moreover, even if Southern New England Telephone Company had information on the existing system, due to its position as the incumbent contractor, the Government is not required to compensate for this advantage unless it results from a preference or unfair action. ABC Refuse Collection, Inc., B-194216, June 4, 1979, 79-1 CPD 388.

Finally, since a responsible representative of Northern Telecom attended the December 20 tour of the Academy, and was on notice of the January 2 deadline for written questions, we do not believe that Telephonics--if it is to be considered the same entity for purposes of this protest--can now complain of lack of opportunity to obtain further information regarding the Coast Guard's requirements. See generally, Peterman, Windham and Vaughn, Inc., 56 Comp. Gen. 239 (1977), 77-1 CPD 20.

The protest is denied.



For The Comptroller General
of the United States